

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 251

October 30, 1959

## COMMUNITY PROPERTY – HOLDING PERIOD OF SURVIVING SPOUSE'S SHARE

### Syllabus:

The holding period of the surviving spouse's share of the community property dates from the original date of acquisition, not the date of death of the deceased husband.

For example, H, the husband, dies intestate. The entire estate is community property and passes to his widow W. Capital assets are sold by W more than 6 months after they were acquired by H and W, but less than 6 months after H's death.

The Internal revenue Service has concluded that under the 1954 Internal Revenue Code the holding period of a surviving spouse's share of community property dates from the original date of acquisition. Rev. Rul. 59-220, IRB 1959-25, p. 14. The revenue ruling relies primarily upon the case of McFeely v. Commissioner, 296 U.S. 102, 80 L. Ed. 83 (1935). That case holds that the time of acquisition, not the time when the stepped up basis is granted, determines when the holding period begins.

The corresponding sections of the Personal Income Tax Law are substantially the same as the federal law. Thus, the McFeely case, supra, is equally applicable under California law. Pursuant to the provisions of Section 161a of the Civil Code, the wife receives a one-half interest in the property at the original date of acquisition by the community. The holding period for the surviving wife's share of the community property begins therefore with the date of original acquisition.